

§ 15A-266.3A. DNA sample required for DNA analysis upon arrest for certain offenses.

(a) Unless a DNA sample has previously been obtained by lawful process and the DNA record stored in the State DNA Database, and that record and sample has not been expunged pursuant to any provision of law, a DNA sample for DNA analysis and testing shall be obtained from any person who is arrested for committing an offense described in subsection (f) or (g) of this section.

(b) The arresting law enforcement officer shall obtain, or cause to be obtained, a DNA sample from an arrested person at the time of arrest, or when fingerprinted. However, if the person is arrested without a warrant, then the DNA sample shall not be taken until a probable cause determination has been made pursuant to G.S. 15A-511(c)(1). The DNA sample shall be by cheek swab unless a court order authorizes that a DNA blood sample be obtained. If a DNA blood sample is taken, it shall comply with the requirements of G.S. 15A-266.6(b). The arresting law enforcement officer shall forward, or cause to be forwarded, the DNA sample to the appropriate laboratory for DNA analysis and testing.

(c) At the time a DNA sample is taken pursuant to this section, the person obtaining the DNA sample shall record, on a form promulgated by the Crime Laboratory, the date and time the sample was taken, the name of the person taking the DNA sample, the name and address of the person from whom the sample was taken, and the offense or offenses for which the person was arrested. This record shall be maintained in the case file and shall be available to the prosecuting district attorney for the purpose of completing the requirements of subsection (j) of this section.

(d) After taking a DNA sample from an arrested person required to provide a DNA sample pursuant to this section, the person taking the DNA sample shall provide the arrested person with a written notice of the procedures for seeking an expunction of the DNA sample pursuant to subsections (h), (i), (j), (k), and (l) of this section. The Department of Justice shall provide the written notice required by this subsection.

(e) The DNA record of identification characteristics resulting from the DNA testing and the DNA sample itself shall be stored and maintained by the Crime Laboratory in the State DNA Databank pursuant to this Article.

(f) This section applies to a person arrested for violating any one of the following offenses in Chapter 14 of the General Statutes:

- (1) G.S. 14-16.6(b), Assault with a deadly weapon on executive, legislative, or court officer; and G.S. 14-16.6(c), Assault inflicting serious bodily injury on executive, legislative, or court officer.
- (1a) G.S. 14-17, First and Second Degree Murder.
- (2) G.S. 14-18, Manslaughter.
- (2a) Any felony offense in Article 6A, Unborn Victims.
- (3) Any offense in Article 7B, Rape and Other Sex Offenses.
- (4) G.S. 14-28, Malicious castration; G.S. 14-29, Castration or other maiming without malice aforethought; G.S. 14-30, Malicious maiming; G.S. 14-30.1, Malicious throwing of corrosive acid or alkali; G.S. 14-31, Maliciously assaulting in a secret manner; G.S. 14-32, Felonious assault with deadly weapon with intent to kill or inflicting serious injury; G.S. 14-32.1(e), Aggravated assault or assault and battery on an individual with a disability; G.S. 14-32.2(a) when punishable pursuant to G.S. 14-32.2(b)(1), Patient abuse and neglect, intentional conduct proximately causes death; G.S. 14-32.3(a), Domestic abuse of disabled or elder adults resulting in injury; G.S. 14-32.4, Assault inflicting serious bodily injury or injury by strangulation; G.S. 14-33.2, Habitual misdemeanor assault; G.S. 14-34.1, Discharging certain barreled weapons or a firearm into occupied property; G.S. 14-34.2, Assault with a firearm or other deadly weapon upon

governmental officers or employees, company police officers, or campus police officers; G.S. 14-34.4, Adulterated or misbranded food, drugs, etc.; intent to cause serious injury or death; intent to extort; G.S. 14-34.5, Assault with a firearm on a law enforcement, probation, or parole officer or on a person employed at a State or local detention facility; G.S. 14-34.6, Assault or affray on a firefighter, an emergency medical technician, medical responder, emergency department nurse, or emergency department physician; G.S. 14-34.7, Assault inflicting serious injury on a law enforcement, probation, or parole officer or on a person employed at a State or local detention facility; G.S. 14-34.9, Discharging a firearm from within an enclosure; and G.S. 14-34.10, Discharge firearm within enclosure to incite fear.

- (5) Any offense in Article 10, Kidnapping and Abduction, or Article 10A, Human Trafficking.
- (5a) Any offense in Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material.
- (6) G.S. 14-51, First and second degree burglary; G.S. 14-53, Breaking out of dwelling house burglary; G.S. 14-54(a1), Breaking or entering buildings with intent to terrorize or injure; G.S. 14-54.1, Breaking or entering a place of religious worship; and G.S. 14-57, Burglary with explosives.
- (7) Any offense in Article 15, Arson.
- (8) G.S. 14-87, Armed robbery; Common law robbery punishable pursuant to G.S. 14-87.1; and G.S. 14-88, Train robbery.
- (8a) G.S. 14-163.1(a1), Assaulting a law enforcement agency animal, an assistance animal, or a search and rescue animal willfully killing the animal.
- (9) Any offense which would require the person to register under the provisions of Article 27A of Chapter 14 of the General Statutes, Sex Offender and Public Protection Registration Programs.
- (10) G.S. 14-196.3, Cyberstalking.
- (10a) G.S. 14-202, Secretly peeping into room occupied by another person.
- (10b) G.S. 14-258.2, Possession of dangerous weapon in prison resulting in bodily injury or escape; G.S. 14-258.3, Taking of hostage, etc., by prisoner; and G.S. 14-258.4, Malicious conduct by prisoner.
- (11) G.S. 14-277.3A, Stalking.
- (12) G.S. 14-288.9, Assault on emergency personnel with a dangerous weapon or substance.
- (13) G.S. 14-288.21, Unlawful manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of a nuclear, biological, or chemical weapon of mass destruction; exceptions; and G.S. 14-288.22, Unlawful use of a nuclear, biological, or chemical weapon of mass destruction.
- (14) G.S. 14-318.4(a), Child abuse inflicting serious injury and G.S. 14-318.4(a3), Child abuse inflicting serious bodily injury.
- (15) G.S. 14-360(a1), Cruelty to animals; maliciously kill by intentional deprivation of necessary sustenance; and G.S. 14-360(b), Cruelty to animals; maliciously torture, mutilate, maim, cruelly beat, disfigure, poison, or kill.
- (16) G.S. 14-401.22(e), Attempt to conceal evidence of non-natural death by dismembering or destroying remains.

(g) This section also applies to a person arrested for attempting, solicitation of another to commit, conspiracy to commit, or aiding and abetting another to commit, any of the violations included in subsection (f) of this section.

(h) The Crime Laboratory shall remove a person's DNA record, and destroy any DNA biological samples that may have been retained, from the State DNA Database and DNA Databank if both of the following are determined pursuant to subsection (i) of this section:

- (1) As to the charge, or all charges, resulting from the arrest upon which a DNA sample is required under this section, a court or the district attorney has taken action resulting in any one of the following:
 - a. The charge has been dismissed.
 - b. The person has been acquitted of the charge.
 - c. The defendant is convicted of a lesser-included misdemeanor offense that is not an offense included in subsection (f) or (g) of this section.
 - d. No charge was filed within the statute of limitations, if any.
 - e. No conviction has occurred, at least three years has passed since the date of arrest, and no active prosecution is occurring.
- (2) The person's DNA record is not required to be in the State DNA Database under some other provision of law, or is not required to be in the State DNA Database based upon an offense from a different transaction or occurrence from the one which was the basis for the person's arrest.

(i) Prior to June 1, 2012, upon the occurrence of one of the events in sub-subdivision d. or e. of subdivision (1) of subsection (h) of this section, the defendant or the defendant's counsel shall provide the prosecuting district attorney with a signed request form, promulgated by the Administrative Office of the Courts, requesting that the defendant's DNA record be expunged from the DNA Database and that any biological samples in the DNA Databank be destroyed. On or after June 1, 2012, upon the occurrence of one of the events in sub-subdivision d. or e. of subdivision (1) of subsection (h) of this section, no request form shall be required and the prosecuting district attorney shall initiate the procedure provided in subsection (j) of this section.

(j) Prior to June 1, 2012, within 30 days of the receipt of the form required by subsection (i) of this section or the occurrence of one of the events in sub-subdivision a., b., or c. of subdivision (1) of subsection (h) of this section; and on or after June 1, 2012, within 30 days of the occurrence of one of the events in subdivision (1) of subsection (h) of this section, the prosecuting district attorney shall determine if a DNA sample was taken pursuant to this section, and if so, shall do all of the following:

- (1) Verify and indicate the facts of the qualifying event on a verification form promulgated by the Administrative Office of the Courts.
- (2) Include the last known address of the defendant, as reflected in the court files, on the verification form.
- (3) Sign the verification form or, if the defendant was acquitted or the charges were dismissed by the court, obtain the signature of a judge.
- (4) Transmit the verification form to the Crime Laboratory.

(k) Within 90 days of receipt of the verification form, the Crime Laboratory shall do all of the following:

- (1) Determine whether the requirement of subdivision (2) of subsection (h) of this section has been met.
- (2) If the requirement has been met, remove the defendant's DNA record and samples as required by subsection (h) of this section.
- (3) Mail to the defendant, at the address specified in the verification form, a notice doing either of the following:

- a. Documenting expunction of the DNA record and destruction of the DNA sample.
- b. Notifying the defendant that the DNA record and sample do not qualify for expunction pursuant to subsection (h) of this section.

(l) The defendant may file a motion with the court to review the denial of the defendant's request or the failure of either the district attorney or the Crime Laboratory to act within the prescribed time period.

(m) Any identification, warrant, probable cause to arrest, or arrest based upon a database match of the defendant's DNA sample which occurs after the expiration of the statutory periods prescribed for expunction of the defendant's DNA sample, shall be invalid and inadmissible in the prosecution of the defendant for any criminal offense.

(n) Notwithstanding subsection (h) of this section, the Crime Laboratory is not required to destroy or remove an item of physical evidence obtained from a sample if evidence relating to another person would thereby be destroyed.

(o) The Crime Laboratory shall adopt procedures to comply with this section. (2010-94, s. 4; 2013-171, s. 9; 2013-360, s. 17.6(f), (j); 2015-181, s. 47; 2015-241, s. 17.3(a); 2018-47, s. 4(n).)